

REMARKS

I. Introduction

1. Claims **19-21** and **37-40** were pending in the present application (with claims **19**, **20** and **37** being independent), prior to Applicants' amendment submitted on July 5, 2006 (hereinafter the "First Amendment") in response to the Non-final Office Action mailed on April 5, 2006 as Part of Paper No./Mail Date 03302006 (hereinafter the "Office Action"). The First Amendment sought to cancel claims **19-21** and **37-40** without prejudice or disclaimer, and enter new claims **41-85**.

2. The First Amendment was deemed non-compliant by the Examiner, for cancelling all pending claims and adding new claims believed by the Examiner to be directed to a different "invention", as was indicated by the Notice of Non-Compliant Amendment mailed on September 15, 2006 as Part of Paper No./Mail Date 20060911 (hereinafter the "First Notice of Non-Compliance"). In accordance with MPEP § 821.03, the First Amendment *should not have been entered*.

3. Accordingly, Applicants submitted a Supplemental Amendment on October 12, 2006 (hereinafter the "Second Amendment"). The Second Amendment sought to amend claims **37-40** and add new claims **41-86**.

4. The Second Amendment was deemed non-compliant by the Examiner, for attempting to amend claims **37-40**, which the Examiner believed to be cancelled due to the entering of the First Amendment (despite the non-compliance thereof), as was indicated by the Notice of Non-Compliant Amendment mailed on January 5, 2007 as Part of Paper No. 20061222 (hereinafter the "Second Notice of Non-Compliance").

5. Applicants' representative spoke (during the third-week of January, 2007) separately with both Primary Examiner Hai V. Tran as well as Supervisory Patent Examiner Christopher S. Kelley to verify that (i) the First Amendment *was entered* erroneously by the Examiner, and therefore (a) claims **19-21** and **37-40** were cancelled

without prejudice or disclaimer and (b) new claims **41-85** were entered, and then withdrawn upon an Election by Original Presentation imposed by the Examiner; and (ii) the Second Amendment was not entered (i.e., new claim **86** was never entered). Supervisory Patent Examiner Kelley requested that Applicants respond to the Second Notice of Non-Compliance with this understanding (i.e., the understanding that the First Amendment was entered, rendering claims **1-40** cancelled and claims **41-86** withdrawn from consideration – i.e., no claims remain under consideration upon filing of this amendment).

6. Accordingly, upon entry of this amendment, which is respectfully requested, new claims **86-90** will be added, claims **87-90** comprising amended forms of now cancelled claims **37-40**, respectively. No new matter is believed to be introduced by this amendment.

Now cancelled claims **37-40** stood, prior to their cancellation, rejected. In particular, all such claims *remained* rejected (despite prosecution having been reopened after Pre-Appeal Brief Review) under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 6,006,257 (hereinafter “Slezak”).

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the amendments and remarks provided herein and in accordance with 37 C.F.R. §1.112.

II. Restriction Requirement

Initially, Applicants note that the Examiner’s premise for labeling the First Amendment “Non-Compliant” is based entirely upon an *unsupported* allegation by the Examiner that all newly submitted claims (e.g., claims **41-85**) are independent or distinct from claims pending at the time of amendment (e.g., claims **19-21** and **37-40**). Applicants respectfully note that the Examiner has utterly failed to establish a *prima facie* case for restriction, as is required for *all* restriction requirements. Accordingly, should the Examiner desire to maintain and/or re-instate the allegation of independence or distinctness upon reconsideration as hereby requested, Applicants formally request that *some* reasoning be set forth that may allow Applicants to formulate a response thereto.

Applicants further note that even if all new claims were independent or distinct from currently pending claims, the Examiner still must set forth reasons why examining such claims would constitute a burden necessitating restriction.

III. Interview

Applicants thank Primary Examiner Tran for speaking with Applicants' representative on July 3, 2006. Applicants note that while no agreement was reached during the interview, a better understanding of the Examiner's interpretation of the cited reference was revealed. At least because Applicants strongly disagree with the Examiner's interpretation of both the cited reference and the pending claims, new claims are presented herein solely to advance prosecution. Any subject matter and/or any original claim not currently being pursued is intended to be pursued in one or more continuing applications.

IV. New Claims

New claims **86-90** are believed to be patentable over the cited reference. Applicants believe, for example, that the cited reference fails to teach, suggest, or render obvious at least:

(i) *receiving, from a viewer of an entertainment program, an indication of one of a plurality of products shown in the entertainment program that the viewer desires to purchase, wherein the indication is descriptive of **how the one of the plurality of products is used in a plot of the entertainment program** (claim 86); or*

(ii) *entering product data related to a product used in an entertainment program, wherein the product data includes information identifying **how the product was used in a scene of the entertainment program** (claims 87-90).*

V. Conclusion

At least for the foregoing reasons, it is submitted that all claims now under consideration are in condition for allowance, *or in better form for appeal*, and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remain any questions regarding the present application or the cited reference, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number 203-461-7017 or via electronic mail at cfincham@walkerdigital.com, at the Examiner's convenience.

VI. Petition for Extension of Time to Respond

While no fees are believed to be due at this time, please charge any fees that may be required for this Amendment to Deposit Account No. 50-0271. Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this Amendment timely, and please charge any fee for such an extension to Deposit Account No. 50-0271.

Respectfully submitted,

January 23, 2007

Date

/Carson C.K. Fincham, Reg.#54096/

Carson C.K. Fincham
Attorney for Applicants
Registration No. 54,096
Walker Digital, LLC
cfincham@walkerdigital.com
203-461-7017 /voice
203-461-7018 /fax